

CODIFIED ORDINANCES OF PARMA
CHAPTER 932
Telecommunications Systems and Facilities

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- "Services" defined to include cable television service - see GEN. OFF. 642.01
- Cable television regulations - see BUS. & REG. Ch. 717
- Water - see S. & P.S. Ch. 943
- Wireless telecommunications facilities - see P. & Z. Ch. 1198

932.01 PERMIT REQUIRED.

All persons, ~~firms, partnerships, corporations, limited liability companies, trusts, joint stock companies, unincorporated associations, governmental entities, banking institutions and any other organization~~ wishing to construct, operate, maintain, reconstruct and/or rebuild a telecommunications network used to provide the telecommunications services to residents, businesses or other premises within the City, or through the City to service other municipalities, shall be required to obtain a telecommunications right-of-way permit from the Director of Public Service in the form as set forth in and consistent with the requirements of this chapter.



932.02 PERMIT FORM.

The form of the telecommunications right-of-way permit required under this chapter shall be as set forth by the Director of Public Service consistent with the requirements of this chapter.

932.025 PERMIT FEES.

The fee for a telecommunications right-of-way permit shall be as set forth in Section 185.05 of the Administrative Code, "Fees of the Director of Public Service".

932.03 DEFINITIONS.

For the purposes of this Permit **chapter**, the following terms, words, abbreviations, phrases and their derivations, whether indicated with an initial capital or not, shall have the meaning given in this section, unless more specifically defined within other sections of the Permit **chapter**. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and not merely directory and "may" is permissive. Words not defined in this section or other sections shall be given their common and ordinary meaning.

"Applicant" means any person applying for a right-of-way permit hereunder.

"Best Efforts" means the best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, safety, expedition, available technology and human resources and cost.

(a) "City" means the City of Parma, a municipal corporation of the State of Ohio, and includes the municipal government of the City of Parma, including the Council, the Mayor, and all boards, commissions, offices, agencies, departments, officers and agents of the City, and also the territory currently, or which may in the future be included, within the geographic boundaries of the City of Parma.

(b) "Content Services" means the provision of every type of information transmitted on a system by a provider, whether voice, data, or video, whether one-way or interactive, including monitoring of security devices, and other similar services. "Content services" includes the operation of a cable system as defined by Federal law at 47 U.S.C. 521 et seq., as amended, or as recognized by the Federal Communications Commission.

(c) "Council" means the legislative body of the City.

(d) "Federal Communications Commission" or "FCC" means the Federal agency created by the United States Communications Act of 1934, as amended, codified at 47 U.S.C. 151 et seq., and any legally appointed, designated or elected agent or successor.

(e) "Permittee" means ~~(NAME OF PERMITEE) and its affiliates, successors and assigns~~ **any person issued a right-of-way permit pursuant to this chapter to use or occupy all or a portion of the rights-of-way in accordance with the provisions of this chapter and said right-of-way permit.**

(f) "Person" means any individual, firm, partnership, corporation, limited liability company, trust, joint stock company, joint venture, unincorporated association, governmental entity, banking institution, joint stock company and any other organization of any kind.

(g) "Public Easements" means public and dedicated easements created and available for use by investor-owned or other public utilities, for their facilities.

"Public Property" means any real property owned by the city or easements held or used by the city, other than a right-of-way.

(h) "Public Utilities Commission" or "PUCO" refers to and means the Public Utilities Commission of the State of Ohio or other authority succeeding to the regulatory powers of the Public Utilities Commission.

(i) "Reasonableness of Consent or Approval" means that whenever, ~~under this Permit,~~ reasonableness is a standard for the granting or denial of the consent or approval of either party to a permit, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

(j) ~~"Street" or "Right-of-Way" or "ROW"~~ means the surface of and the space above and below the paved and unpaved portions of any public streets, highways, paths, ways, drives, courts, alleys, viaducts, bridges, roads, lanes, sidewalks, public easements, public rights-of-way, and any other land dedicated easements or otherwise designated for the same now or hereafter held by within the City. "Right-of-Way shall not include public property, except to the extent the use or occupation of public property is specifically granted in a right-of-way permit in accordance with this chapter.

"Right-of-Way Permit" or "ROW Permit" means the non-exclusive grant of authority to use or occupy all or a portion of the city's rights-of-way granted pursuant to this chapter.

(k) ~~"Telecommunication System" or "Telecommunications and/or Other Utility System"~~ means the telecommunications network constructed and maintained by the permittee and used to provide telecommunications services in the City in accordance with the terms of this a ROW Permit granted hereunder, including all facilities owned or used by the permittee within the City.

(l) ~~"Telecommunications Facilities"~~ means any and all equipment, structures, materials or tangible components of the permittee's system, including, without limitation, the plant, whether inside or outside, all works, fiber strands, electronic equipment, amplification equipment, optic equipment, transmission and distribution structures, lines, termination equipment, pipes, sewers, mains, tubing, conduits, innerducts, regenerators, repeaters, underground lines, vaults, manholes, handholes, antennas, wires, cables, towers, poles and attachments, used for the telecommunications systems, ~~whether owned by any public or private or profit or nonprofit person, firm, partnership, company, corporation, joint stock association, joint venture, or voluntary association, whether organized or incorporated, except for a private septic system in a single or double family dwelling utilized only for that dwelling and not connected to any other system and also excepting government-owned facilities.~~

(m) ~~"Telecommunications Services"~~ means electronic or optic transmission of data, video, and/or voice communications between separate points by means of telecommunications facilities, including (i) services interconnecting interexchange carriers for the purpose of voice, video or data transmission; (ii) services connecting interexchange carriers or competitive carriers to telephone companies providing local exchange services for the purpose of voice, video or data transmission; (iii) services connecting interexchange carriers to any end users; (iv) services providing private line point to point service for end users for voice, video and data transmission; or (v) local exchange telephone connecting services as specifically permitted by the PUCO, the FCC or any other applicable State or Federal regulatory authority.

(n) ~~"Utility"~~ means all other utilities besides telecommunications services, whether owned by any public or private or profit or nonprofit person, individual, firm, partnership, corporation, limited liability company, joint venture, trust, joint stock company, unincorporated association, governmental entity, banking institution, joint stock company, and any other organization of any kind, or voluntary association, whether organized or incorporated, except for a private septic system in a single or double-family dwelling utilized only for that dwelling and not connected to any other system and also excepting government-owned facilities, but specifically including, but not limited to, all other utilities defined as public utilities under Ohio R.C. 4905.02.

932.04 PERMIT ISSUANCE AND CONDITIONS.

(a) Grant. The City hereby may grants to the an permittee applicant a ~~non-exclusive and revocable~~ right-of-way permit to make reasonable and lawful use of the streets and rights-of-way within the City, to construct, operate, maintain, reconstruct and rebuild a system within the City for the purposes of delivering telecommunications services to residents, businesses or other premises within the City and elsewhere, subject to the conditions, terms and provisions contained in this Permit chapter or use agreements entered into with regard to any such properties. ~~Subject to the terms of this Permit, this Permit shall constitute a non-exclusive right to make reasonable use of the streets, identified below, as may be necessary or convenient to carry out the terms of this Permit in the City. The City reserves the right to grant similar uses, licenses, franchises, permits, or any other rights with regard to the public rights-of-way~~

or any other Municipal interest, to any other person. The rights granted under this a right-of-way Permit are also expressly subject to any rights granted previously by the City to any person. The granting of this a right-of-way Permit may also be cause for the revocation of prior permits granted to the permittee, as specified in such prior permits.

(b) Permit Area. ~~The permittee is authorized by this Permit to encroach with conduit, telecommunications cable (fiber optics) and other telecommunications facilities as described in Exhibit A, attached to original Ordinance 322-97, passed January 18, 2000, and expressly made a part hereof by reference, in the streets listed in Exhibit B, attached to original Ordinance 322-97, passed January 18, 2000, and expressly made a part hereof by reference.~~ **All rights-of-way subject to a ROW permit granted hereunder shall be listed within the permit application submitted by the applicant.**

(c) Acceptance and Filing Fees. ~~The permittee shall pay to the City an acceptance fee based on a formula of one dollar (\$1.00) per linear foot of streets traversed and one thousand dollars (\$1,000) per underground public street crossing, to cover costs incurred by the City in reviewing, enforcing and granting this Permit. This Permit shall also be subject to a fee of twenty five dollars (\$25.00) for filing said Permit with the Clerk of Council of the City~~ **The fees for a ROW permit shall be in accordance with Chapter 185.05 of these Codified Ordinances.**

(d) Use of Streets and Rights-of-Way. Subject to the City's supervision and control, the permittee may erect, install, construct, repair, replace, reconstruct, and retain in, over, under, upon, across and along the streets and rights-of-way and public easements within the permit area such telecommunications system **and facilities** for the sole purpose of providing telecommunications services within the City. The permittee shall comply with all applicable Federal, State and local construction codes, laws, ordinances, regulations and procedures, now in effect or enacted hereafter. The permittee, through this Permit, is granted extensive and valuable rights to operate its system for profit or otherwise, using the City's rights-of-way and streets within the Permit area, all in compliance with all applicable Federal, State and local construction codes, laws, ordinances, regulations and procedures, now in effect or enacted hereafter. **Where possible, any antennas and ancillary equipment that are part of a telecommunications system will be installed in a manner shown in drawings provided by the Permittee. Pole top antennas that have or taper to the same diameter as the pole are preferred. Where codes, standards, utility pole owner rules or standards, or other limitations or circumstances dictate, an alternate antenna design may be approved by the City. Where possible, related equipment will be placed on the pole rather than on the ground. However, ground mounted equipment is preferred when equipment mounted on the pole would be visually unappealing or so large as to significantly change the visual appearance of the pole. When placed on the ground, equipment should be mounted in such a manner to minimize a hazard to traffic, pedestrian travel. Where possible, existing poles will be used. Where utility pole owner rules or standards dictate, approval must be given for specific Permittee new poles by the City Engineer.**

(e) Force and Effect. This revocable A ROW Permit shall be of no force or effect until the following requirements have been complied with:

(1) The permittee **applicant** shall have filed with **submit** a written acceptance of the terms and conditions of this **the ROW** Permit together with the acceptance **all applicable fees**; calculated pursuant to the system footage and street crossings specified in Exhibit A attached to original Ordinance 322-97, passed January 18, 2000, and a fee for filing with **to** the Clerk of Council in and for the City **Director of Public Service**. Said acceptance shall be in substantially the following form:

Date: _____

We the undersigned do hereby accept all of the terms and conditions recited in Ordinance No. _____ **Chapter 932 of the Parma Codified Ordinances**, and contained in this permit. The name and address of our representative to whom notices shall be sent is as follows:

The proposed system design is attached hereto as Exhibit "A". The streets rights-of-way where construction will occur are listed in attached Exhibit "B".

Signed by:
(Permittee Applicant)

By:

(Name of Officer)

(2) The permittee applicant shall have filed all insurance policies and certificates herein recited with the Director of Purchasing, who shall notify the Director of Public Safety Service, in writing, that such policies and certificates are acceptable to the City;

(3) The permittee applicant shall file a copy of the appropriate authorization from the Public Utilities Commission of the State of Ohio with the City Director of Public Safety Service; and

(4) The Director of Public Safety shall have certified, in writing, to the Clerk of Council that the foregoing requirements have been performed.

(f) Permit Non-Exclusive. This A ROW Permit shall be non-exclusive, and subject to all prior rights, interests, easements or licenses granted by the City or its predecessors to any person to use any property, right-of-way, easement, right, interest or license for any purpose whatsoever, including the right of the City to use the same for any purpose it deems fit, including the same or similar purposes allowed the permittee thereunder. The City may at any time grant authorization to use the streets and rights-of-way for any purpose as the City deems appropriate.

(g) Police Powers. The permittee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and the permittee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by the City or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City reserves the right to exercise its police powers, notwithstanding anything in this Permit chapter to the contrary, and any conflict between the provisions of this Permit chapter and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter.

(h) PUCO Authorization. The permittee shall obtain, prior to the beginning of any construction, authority from the Public Utilities Commission of the State of Ohio, to provide telecommunications services, if the same is required by law.

(i) Cable Operators Subject to Franchise. The permittee shall not provide any additional services without first obtaining a separate permit from the City, ~~or amending this Permit~~, and shall not allow the use of the system for content services by itself, its affiliates or any service provider (including video dialtone and cable television), unless the service provider has been granted a permit or franchise for such service by the City. Concerning cable television, the permittee shall neither operate as a cable operator, as that term is defined in the Cable Act, 47 U.S.C. 522(4), nor provide or offer to provide cable service, as that term is defined in the Cable Act, 47 U.S.C. 522(5), under this any Permit granted hereunder without first obtaining a franchise to do so. The permittee shall not provide or offer to provide any other video and/or audio services offered by cable operators to residential end users under this any Permit granted hereunder without first obtaining a franchise to do so. This Permit is granted to the permittee shall be solely for the purpose of directly serving it's a permittee's end-user customers and common carriers.

932.05 DESIGN AND CONSTRUCTION REQUIREMENTS; STREET AND OTHER PUBLIC IMPROVEMENTS; TECHNICAL STANDARDS; TREE TRIMMING.

(1) Construction.

A. Subject to applicable Federal, State and local laws, regulations and ordinances of the City and the provisions of this any Permit granted hereunder, a permittee may perform all construction necessary for the operation of its telecommunications system. All construction and maintenance of any and all telecommunications facilities within streets rights-of-way incident to the permittee's system shall, regardless of who performs the construction, be and remain the permittee's responsibility. The permittee shall apply for, and obtain, all generally applicable permits necessary for the construction or installation of any facilities, and for excavating and laying any facilities, within the streets rights-of-way. The permittee shall pay all applicable fees upon issuance of the requisite construction permits by the City to the permittee.

B. Prior to beginning any construction, the permittee shall provide the City with a construction schedule for work in the streets rights-of-way. When the permittee's construction of facilities in the streets rights-of-way is completed, the permittee shall provide the City with a map showing the location of the installed facilities in the streets rights-of-way, as built, in detail, excluding proprietary electronics. All as-builts shall be available at the permittee's local office for inspection.

C. The permittee may, with the approval of the City, make excavations in streets rights-of-way for any facility needed for the maintenance or extension of the permittee's system. Prior to doing such work, the permittee shall apply for, and obtain, generally applicable permits from the City, and give appropriate notices to any other franchisees, licensees or permittees of the City, or departments of the City, or other units of government owning or maintaining pipes, wires, conduits or other facilities and equipment which may be affected by the proposed excavation.

D. In the event that emergency repairs are necessary, the permittee shall immediately notify the City of the need for such repairs. The permittee may initiate such emergency repairs, and shall apply for appropriate permits within twenty-four hours after discovery of the emergency. The permittee shall comply with all applicable regulations of the City relating to such excavation or construction, including the payment of permit or license fees.

(2) Location of Facilities.

A. Within forty-eight hours after any other franchisee, licensee, permittee, or other entity to which the City has granted permission to conduct excavation activities notifies a permittee of a proposed street right-of-way excavation, the permittee shall, at the permittee's expense:

1. Mark on the surface all of its locatable underground facilities within the area of the proposed excavation;
2. Notify the excavator of any unlocatable underground facilities in the area of the proposed excavation; or
3. Notify the excavator that the permittee does not have any underground facilities in the vicinity of the proposed excavation.

B. In the event that all surfaces were accurately marked for underground facilities as requested and the permittee's plant was cut or damaged for whatever reason, then the entity responsible for causing such damage shall be required to notify the permittee of such damage and pay for the repair of the permittee's plant.

(3) Restoration of Streets Rights-of-Way.

A. Whenever a permittee disturbs the surface of any street right-of-way for any purpose, the permittee shall promptly restore the street right-of-way to at least its prior condition to the satisfaction of the City Engineer. When any opening is made by a permittee in a hard surface pavement in any street right-of-way, the permittee shall promptly refill the opening and restore the surface to a condition satisfactory to the City Engineer.

B. If the permittee excavates the surface of any street right-of-way, the permittee shall be responsible for restoration of the street right-of-way and its surface within the area affected by the

excavation, in accordance with applicable regulations of the City and to the satisfaction of the City Engineer. The City may, after providing notice and an opportunity to correct to the permittee, refill and/or repave any opening made by the permittee in the street **right-of-way**, and the expense thereof shall be paid by the permittee. The City may, after providing notice and an opportunity to correct to the permittee, remove and/or repair any work done by the permittee which, in the determination of the City, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by the permittee. All excavations made by the permittee in the streets **rights-of-way** shall be properly safeguarded for the prevention of accidents. All of the permittee's work under this chapter and this section, in particular, shall be done in strict compliance with all rules, regulations and ordinances of the City.

(4) Maintenance and Workmanship.

A. A permittee's system shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, **utility, infrastructure, equipment**, or any other property of the City or County, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the streets **rights-of-way** by, or under, the authority of the City.

B. The permittee shall provide and use any equipment and appliances necessary to control and carry the permittee's signals or other utilities so as to prevent injury to the City's property or property belonging to any person. The permittee, at its own expense, shall repair, renew, change and improve its facilities as listed above in good repair, and safe and presentable condition.

(5) Acquisition of Facilities. Upon a permittee's acquisition of facilities in any street **right-of-way** in the City, or upon the addition or annexation to the City of any area in which the permittee owns or operates any facility, the permittee shall, at the City's request, submit to the City a statement describing all facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent the permittee has possession of such information. Such facilities shall immediately be subject to the terms of this **chapter or any Ppermit granted hereunder**.

(6) Reservation of City Street **ROW** Rights. Nothing in this **chapter or any Ppermit granted hereunder** shall prevent the City or public utilities owned, maintained and/or operated by public entities other than the City, from constructing sewers; grading, paving, repairing and/or altering any street **right-of-way**; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of the permittee's system. However, if any of the permittee's system interferes with the construction or repair of any street **right-of-way** or public improvement, including construction, repair or removal of a sewer or water main, such portion of the permittee's system shall be removed or replaced in the manner the City shall reasonably direct, and the City shall in no event be liable for any damage to any portion of the permittee's system. Any and all such removal or replacement shall be at the expense of the permittee. Should the permittee fail to remove, adjust or relocate its facilities by the date established by the written notice of the City to the permittee, the City may effect such removal, adjustment or relocation, and the reasonable expense thereof shall be paid by the permittee, including all reasonable costs and expenses incurred by the City due to the permittee's delay.

(7) Street-Vacating **ROW**. If any street **right-of-way** or portion thereof used by the permittee is vacated by the City during the term of its permit, unless the City specifically reserves to the permittee the right to continue its installation in the vacated street **right-of-way**, the permittee shall, without delay or expense to the City, remove or discontinue its use of its facilities from such street **right-of-way**, and restore, repair or reconstruct the street **right-of-way** where such removal has occurred, and replace the street **right-of-way** in the condition found. In the event of the failure, neglect or refusal of the permittee, after a time period to be negotiated by the City and the permittee, to restore, repair or reconstruct such street **right-of-way**, the City may do such work or cause it to be done, and the cost thereof may be collected by the City from the performance bond of the permittee, if any.

(8) Discontinuing Use of Facilities. Whenever a permittee intends to discontinue using any

facility within the streets rights-of-way, the permittee shall submit for the City's approval a complete description of the facility and the date on which the permittee intends to discontinue using the facility. The permittee may remove the facility or request that the City ~~permit~~ allow it to remain in place. Notwithstanding the permittee's request that any such facility remain in place, the City may require the permittee to remove the facility from above the street right-of-way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The City may require the permittee to perform a combination of modification and removal of any such ~~above-ground~~ facility. The permittee shall complete such removal or modification in accordance with a schedule set by the City and shall restore the area to a condition satisfactory to the City. Until such time as the permittee removes or modifies the facility as directed by the City, or until the rights to and responsibility for the facility are accepted by another person having authority to construct and maintain such facility, the permittee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the street right-of-way, in the same manner and degree as if the facility were in active use, and the permittee shall retain all liability for such facility.

(9) Hazardous Substances.

A. A permittee shall comply with all applicable Federal, State and local laws, statutes, regulations, and orders, including, but not limited to, the National Electric Safety Code, concerning hazardous substances relating to the permittee's system in the streets rights-of-way.

B. The permittee shall maintain and inspect its system located in the streets rights-of-way. Upon reasonable notice to the permittee, the City may inspect the permittee's facilities in the streets rights-of-way to determine if any release of hazardous substances has occurred, or may occur, from or related to the permittee's system. In removing or modifying the permittee's facilities as ~~provided in this Permit~~, the permittee shall also remove all residue of hazardous substances related thereto.

C. The permittee agrees to forever indemnify the City against any claims, costs and expenses, of any kind, nature and description, whether direct or indirect, including reasonable attorney fees, incurred by the City arising out of the release of hazardous substances caused by the permittee's system.

(10) Undergrounding of Cable. Whenever feasible, A ~~a~~ permittee's existing facilities and existing portions of the permittee's system shall be placed underground at the permittee's expense when other utilities in the same rights-of-way place their facilities underground, or when required of all utilities and persons by general ordinances of the City or applicable State or Federal law.

(11) Construction Codes. A permittee shall strictly adhere to all building and zoning codes currently or hereafter in effect. The permittee shall arrange its works, fiber strands, electronic equipment, amplification equipment, optic equipment, transmission and distribution structures, lines, termination equipment, pipes, sewers, mains, tubing, conduits, inner-ducts, regenerators, repeaters, underground lines, vaults, manholes, handholes, wires, cables, towers, poles and attachments and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of such public or private property by any person. In the event of such interference, the City may require the removal or relocation of the permittee's facilities, at the permittee's sole cost and expense, and other appurtenances from the property in question.

(12) Construction and Use of Poles.

A. Whenever feasible, the construction, maintenance, and use of the permittee's system shall comply with the standards of materials in engineering and all other provisions of a pole user agreement for use of poles, entered into by and between other pole users and the permittee. In the event the permittee cannot obtain the necessary poles and allied facilities pursuant to the provisions of such an agreement, and only in such event, then it shall be lawful for the permittee to make all needed excavations in the streets rights-of-way for the purpose of placing, erecting, laying, maintaining, repairing, and removing poles, conduits, supports for wires and conductors, and any other facility needed for the maintenance or extension of the permittee's system as the City may, at its discretion, approve. All poles of the permittee shall be erected between the curb and the sidewalk unless otherwise designated by the

proper authorities of the City, and each pole shall be set whenever practicable at an extension lot line. The City shall have the right to require the permittee to change the location of any permittee-owned pole, conduit, structure or other facility within the streets rights-of-way when, in the opinion of the City, the public convenience requires such change, and the expense thereof shall be paid by the permittee.

B. Nothing herein shall exempt the permittee from compliance with all Charter and ordinance provisions relating to such excavations or the construction thereof or from any provision requiring payment of other permit, franchise or license fees pertaining thereto.

(13) System Design. The permittee's system shall comply with the design and service requirements and schedules contained in this Permit chapter and any franchise, **and** all applicable laws and regulations, and the Exhibits attached to original Ordinance 322-97, passed January 18, 2000. All of the permittee's construction and design shall be subject to the City's supervision and control, including, without limitation, the location of facilities, the placement of poles, and the decision to underground any facilities. The permittee shall submit construction drawings and specifications for approval on all projects.

(14) System Upgrade Schedule.

A. ~~The permittee shall comply with the requirements of the system upgrade schedule to be contained in Exhibit C, attached to original Ordinance 322-97, passed January 18, 2000, and expressly made a part hereof by reference.~~

~~_____ B. No less than thirty days prior to the start of construction in the serving area, t~~The permittee shall meet all applicable design and construction standards of the City and shall provide a detailed construction progress schedule, area construction maps, and all other required information. In addition, the permittee shall update this information upon request by the City on a quarterly basis, by submitting a copy of its normal internal progress reports, showing specifically whether schedules are being met and the reasons for any delay.

(15) Installation of New System Underground. When feasible, ~~A~~all new or upgrade telecommunications system facilities shall be installed underground ~~where existing underground utility facilities exist, but may be installed on existing utility poles where aerial facilities currently exist, if permitted by the City. In areas where no poles exist, the permittee shall place its facilities underground, and the permittee shall move existing facilities underground whenever all other utilities go underground, or if the permittee upgrades its system facilities.~~

(16) Prewiring. Any law of the City which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for telecommunications systems.

(17) Undergrounding of Multiple-Dwelling Units. In cases of single site multiple-dwelling units, the permittee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole or underground junction box and the dwelling unit, where determined to be technologically feasible, in agreement with the owners and/or the owner's association of the multiple-dwelling units. This section shall apply only to newly constructed buildings or unwired existing buildings. The permittee shall be required to install drop cables only if all other utilities are required to do the same at the time of installation.

(18) Right-of-Way Occupancy.

A. In any case where the permittee has the required written permission from the City not to underground its system facilities, the permittee shall utilize existing poles, conduits and other facilities whenever possible and economically feasible, and may not construct or install any new, different or additional poles, conduits or other facilities on public property until the written approval of the City is obtained.

B. The permittee shall:

1. Locate and install all transmission lines, equipment and structures so as to cause minimum interference with the rights and reasonable convenience of property owners. However, the permittee shall retain the right to determine, because of technical feasibility and technical reliability,

where, when, how and if equipment originally installed needs to be redesigned, reconfigured or relocated;

2. Keep and maintain all transmission lines, equipment and structures in a safe, adequate and substantial condition, and in good order and repair;

3. Employ professional care and install and maintain methods and devices for preventing failures and accidents that are likely to cause damage, injuries or nuisances to the public;

4. Use suitable barricades, flags, lights, flares or other devices as necessary for the safety of all members of the public;

5. Place any poles or other fixtures in any public right-of-way in such manner as not to interfere with the usual travel of the right-of-way or cause unsafe conditions of any sort; and

6. Comply with all local and State laws, rules and regulations pertaining to traffic control.

C. The permittee may not make paving cuts or curb cuts unless absolutely necessary, and only after written permission and a ~~street-cut~~ **right-of-way opening** permit have been obtained from the City, under such conditions as the City shall, in its sole discretion, determine.

D. The City may reasonably require conduit for underground cable in areas specified by the City, said conduit to be provided at the permittee's sole expense.

E. Before beginning any excavation or other construction activity on a public right-of-way or easement which crosses or abuts any private property, the permittee shall clearly mark and delineate with flags, stakes or non-polluting water-soluble spray paint, the boundaries of that public right-of-way or easement where it abuts or crosses the private property.

F. In case of disturbance of any street, sidewalk, alley, easement, public way, grassed or paved area, or any public or private property, the permittee shall, at its own cost and expense and in a manner approved by the City, replace and restore such street, sidewalk, alley, easement, public way, grassed, **landscaped** or paved area, or any other public or private property, in as good condition as, or better condition than, before the work causing such disturbance was performed, to the satisfaction of the City.

G. The permittee shall locate, mark and map any of its installed facilities and its system for the City at no expense to the City. The cable, **fiber, equipment**, and other facilities shall be installed so that it can be detected by the use of standard locating devices.

(19) Completion of Work by City. On failure of the permittee to commence, pursue or complete any work required by law or by the provisions of this **any Ppermit granted hereunder** or any **other** applicable permit or franchise, to be done in any ~~public~~ right-of-way or ~~public-utilities~~ easement, within the time prescribed and to the reasonable satisfaction of the City, the City may cause the work to be done. The permittee shall pay to the City the costs of the work in the itemized amount reported by the City to the permittee within twenty days after receipt of the itemized report. Failure to timely reimburse the City for these costs may result in the revocation of its permit.

(20) Removal of Facilities. On receipt of written notice, the permittee, at its own expense, shall:

A. Protect, support, temporarily disconnect, relocate or remove any of its property as necessary due to traffic conditions, public safety, street vacation or street grade, separation or realignment, installation of sewers, drains, water pipes, power lines, signal lines, transportation facilities, tracks, or any other type of structure or improvements; and

B. On the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of the building or buildings. The permittee may require reasonable advance payment from any such permittee prior to raising or lowering its wires. Nothing described in this subsection shall be considered a taking of the property of the permittee and the permittee is not entitled to additional compensation due to these actions.

(21) Stop Work.

A. On notice from the City that any work is being prosecuted contrary to the provisions of this **chapter and any Ppermit granted hereunder**, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any other applicable permit, franchise, laws, regulations,

ordinances, or standards, the work may immediately be stopped by the City.

B. The stop work order shall be:

1. In writing;
2. Given to the individual doing the work, or posted on the work site; and
3. Sent to the permittee by overnight delivery at the address given herein;
And may:
4. Indicate the nature of the alleged violation or unsafe condition; and
5. Establish conditions under which work may be resumed.

(22) Permittee's Contractors. The permittee's contractors shall be licensed and bonded in accordance with the City's ordinances, regulations or requirements relating to any contractors working in the public rights-of-way. Any action or omission of a contractor of the permittee which violates any provision of this Permit **chapter** shall be considered an action or omission of the permittee for the purposes of this Permit **chapter**.

(23) Private Property. Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, the permittee shall give reasonable notice to the property owners or legal tenants prior to entering upon any private premises, and said notice shall specify the work to be performed, provided that in the case of construction operations, such notice shall be delivered or provided, when possible, prior to entry. If any damage is caused by any activity or omission of the permittee, the permittee shall reimburse the property owner the reasonable cost of the damage or replace or repair the damaged property. For the installation of pedestals or other major construction or installation projects, property owners shall also be notified by mail at least one week in advance. In the case of an emergency (as defined above), the permittee shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Nothing herein shall be construed as authorizing access or entry to private property or any other property where such right to access or entry is not otherwise provided by law.

(24) Burial Standards.

A. Depths. The permittee shall comply with the following burial depth standards ~~unless local ordinances or~~ **required by the current edition of the** National Electrical Code, ~~standards require a deeper minimum depth:~~

- ~~1. Drops from the curb shall be buried at a minimum depth of eight inches.~~
- ~~2. Feeder lines shall be buried at a minimum depth of eighteen to twenty four inches.~~
- ~~3. Trunk lines shall be buried at a minimum depth of eighteen to twenty four inches.~~
- ~~4. Fiber optic cable shall be buried at a minimum depth of eighteen to twenty four inches.~~

B. Timeliness. Temporary drops installed by the permittee to residences shall be buried according to these standards within one calendar week of initial installation. When freezing surfaces or other adverse weather conditions prevent the permittee from achieving such timetable, the permittee shall apprise the subscriber of the circumstances and the estimated time of burial, in writing, and shall provide the subscriber, in writing, with the permittee's telephone number and instructions as to how and when to call the permittee to request burial of the line if the revised schedule is not met.

(25) National Standards. The City shall have the option of adopting any national standards for the installation of optic fiber hereafter promulgated or established, which standards shall be adhered to by the permittee.

(26) Construction Standards.

A. The permittee shall comply with all of the City's applicable construction codes, including those incorporated by reference into these Codified Ordinances, and further including, ~~without limitation, the Electronic Industries Association Standard for Physical Location and Protection of Below Ground Fiber Optic Cable Plant,~~ zoning ordinances and permit procedures. The grantor **City** may charge

permit fees consistent with existing laws for upgrade construction of the cable plant. To expedite the upgrade construction process, the grantor agrees to attempt to process all applications, reviews, authorizations or consents pertaining to permits, zoning issues, authorizations and consents in a period not to exceed thirty days from the date a complete written application or request was made to the grantor.

B. All construction practices shall be in accordance with all applicable sections of Federal and State Occupational Safety and Health Acts, and any amendments thereto, as well as all State and local codes and standards, where applicable.

C. All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical Code, as amended, and all applicable State and local codes.

D. Antenna supporting structures (**limited to towers and poles**) shall be designed, **constructed and maintained** for the proper loading as specified in **according to the specifications, rules and regulations of the** Electronic Industries Association's R.S. 222-A specifications, as they may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable State and local codes or regulations.

E. Neither the permittee's plant and equipment, nor any work the permittee performs, shall endanger or interfere with, in any manner beyond reasonable requirements given the work the permittee is performing, the rights of any property owner, or hinder or obstruct pedestrian or vehicular traffic.

F. The permittee shall at all times employ professional care and shall install and maintain in use methods and devices to prevent failures and accidents which risk damage, injury or nuisance to the public.

(27) Cable Service to New Residential Developments. In new residential developments in which all the electric power and telephone utilities are underground, the following procedure shall apply with respect to access to and utilization of underground easements:

A. The developer shall be responsible for contacting and surveying all franchised cable operators to ascertain which operators desire (or, pursuant to the terms and provisions of this chapter and any franchise agreement, may be required) to provide cable service to that development. The developer may establish a reasonable deadline to receive cable operator responses. The final development map shall indicate the cable operators that have agreed to serve the development.

B. If one or two cable operators wish to provide service, they shall be accommodated in the joint utilities trench on a nondiscriminatory shared basis. If fewer than two operators indicate interest, the developer shall provide conduit to accommodate two sets of cable television cables and dedicate to the City any initially unoccupied conduit. The developer shall be entitled to recover the pro-rata cost of such initially unoccupied conduit in the event that the City subsequently leases or sells occupancy or use rights to any other cable operator.

C. The developer shall provide at least ten working days notice of the date that utility trenches will be open to the cable operators that have agreed to serve the development. When the trenches are open, cable operators shall have two working days to begin the installation of their cables, and five working days after beginning installation to complete installation.

D. The final development map shall not be approved until the developer submits evidence that:

1. It has notified each cable operator that underground utility trenches are to open as of an estimated date, and that each cable operator will be allowed access to such trenches, including trenches from proposed streets to individual homes or home sites, on specified nondiscriminatory terms and conditions; and

2. It has received a written notification from each cable operator that the cable operator intends to install its facilities during the open trench period on the specified terms and conditions, or such other terms and conditions as are mutually agreeable to the developer and the cable operator, or

has received no reply from a cable operator within ten days after its notification to such cable operator, in which case the cable operator will be deemed to have waived its opportunity to install its facilities during the open trench period.

E. Sharing the joint utilities trench shall be subject to compliance with any applicable State regulatory agency and utility standards. If such compliance is not possible, the developer shall provide a separate trench for the cable television cables, with the entire cost shared among the participating cable operators. With the concurrence of the developer, the affected utilities and the cable operators, alternative installation procedures, such as the use of deeper trenches, may be utilized, subject to applicable law.

F. Any cable operator wishing to serve an area where the trenches have been closed and existing conduit is utilized to capacity, shall be responsible for its own trenching, as approved by the City, and associated costs, and shall repair all property to the condition which existed prior to such trenching or burial, to the satisfaction of the City.

G. The City reserves the right to require clustering of pedestals with other utilities, licensees, permittees or franchisees.

(28) ~~Street~~ **ROW** Improvements. The City shall attempt to give permittees at least forty-five days advance notice (or notice as soon as possible in cases of emergency) of ~~street~~ **right-of-way** improvements or other activity which could affect the permittee's system, including, but not limited to, ~~street or public~~ rights-of-way excavation, construction, repair, grading, traffic conditions, installation of sewers, drains or water pipes, power or signal lines, tracks or vacation or improvement of public works.

A. All such public works shall be done, insofar as possible, in such a manner as not to obstruct, injure, or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of the permittee's system. Nothing contained herein shall relieve any person or entity from liability arising out of the failure to exercise reasonable care to avoid interfering with the permittee's system facilities while performing the public works.

B. If any equipment of the permittee shall interfere with public works, then, upon receipt of the notice, that part of the equipment of the permittee which interferes shall be removed or replaced by the permittee in such manner as shall be directed by the City so that the same shall not interfere with the public works as reasonably determined by the City, and the permittee shall bear the reasonable expense of such removal or replacement.

(29) Notice. Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, the permittee shall give reasonable notice to the property owners or legal tenants prior to entering upon any private premises, and said notice shall specify the work to be performed. If any damage is caused by any permittee activity or omission, the permittee shall reimburse the property owner the reasonable cost of the damage or replace the damaged property. For installation of pedestals or other major construction or installation projects, property owners shall also be notified by mail at least one week in advance. In the case of an emergency (as defined above), the permittee shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made. Nothing herein shall be construed as authorizing access or entry to private property or any other property where such right to access or entry is not otherwise provided by law.

(30) Technical Standards.

A. The permittee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, Federal Communications Commission technical standards, and any standards set forth in its franchise agreement, if any.

B. Failure to maintain specified technical standards shall constitute a material permit violation.

C. All construction practices shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, as well as all other applicable Federal, State

and local laws and regulations.

D. All installation of electronic equipment shall be installed in accordance with the provisions of the National Electrical and Safety Code and the National Electrical Code, as the same may, from time to time, be amended.

E. Antennas and their supporting structures (**limited to towers and poles**) shall be ~~ainted, lighted,~~ erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable Federal, State and local laws and regulations.

F. All of the permittee's ~~plant and equipment, including, but not limited to, the antenna site, headend and distribution system, towers, house connections, structures, poles, wire, coaxial cable, fiber strands, electronic equipment, amplification equipment, optic equipment, transmission and distribution structures, lines, termination equipment, pipes, sewers, mains, tubing, conduits, innerducts, regenerators, **antennas**, repeaters, underground lines, vaults, manholes, handholes, wires, cables, towers, poles and attachments, and fixtures and appurtenances, used for the telecommunications system,~~ **telecommunications facilities and systems** shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements that the City may deem appropriate to make or to interfere in any manner with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

G. The permittee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

(31) Trimming of Trees.

A. The permittee shall have the authority to trim trees, at its sole cost, in accordance with all applicable utility restrictions and ordinance and easement restrictions, upon and hanging over ~~streets, alleys, sidewalks,~~ **rights-of-way** and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the permittee, at the permittee's sole cost. The City representatives shall have authority to supervise and approve all trimming of trees conducted by the permittee.

B. Except in emergencies, the permittee may not prune trees at a point below thirty feet above sidewalk grade until one week after written notice has been given to the owner or occupant of the premises abutting the ~~street~~ **right-of-way** in or over which the tree is growing. For purposes of this section, emergencies exist when it is necessary to prune to protect the public from imminent danger of immediate interruption of cable signal. The owner or occupant shall have seven days from the receipt of the permittee's notice to arrange for an outside contractor to prune the tree, at his or her own expense. If the owner or occupant fails to do so, the permittee may prune such tree at its own expense.

(32) Use of Facilities by City. The City shall have the right to install and maintain, free of charge, upon the poles and within the underground pipes and conduits of the permittee, any wires and fixtures desired by the City, to the extent that such installation and maintenance do not unreasonably interfere with existing operations of the permittee and are in accordance with other governmental regulations.

932.06 ADMINISTRATION AND REGULATION.

(a) Authority. The City expressly reserves, and the permittee expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such resolutions, ordinances and rules and regulations as may be deemed necessary by the City in the lawful exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties. The Codified Ordinances of the City, as the same may be amended from time to time, are expressly incorporated, as if fully set out herein, by this reference. The permittee shall comply with all resolutions, ordinances, rules and regulations of the City and shall obtain all required permits. All permittees who are

also franchisees under a cable television franchise granted by the City shall further comply with all requirements contained in the cable franchise agreement and the master cable television regulatory ordinance. Any failure of the permittee to comply with the requirements of the City described herein shall constitute an evasion of obligations under this Permit **chapter**, and shall be prohibited. The City reserves the right to delegate any of its rights or obligations under this Permit **chapter**, without the consent of the permittee, to any person, organization or official.

(b) Coordination and Environmental Impact. Except for emergencies, the City may require that all construction and installations be coordinated with the City's ~~street~~ **right-of-way** improvement programs. In addition, the permittee shall assess and report on the impact of its proposed construction on the City environment. Such reports may be reviewed by the City to ensure, inter alia, (i) that all applicable laws, including building and zoning codes and air and water pollution regulations, are complied with, (ii) that aesthetic and good planning principles have been given due consideration, and (iii) that adverse impact on the environment has been minimized. The permittee shall incorporate reasonable changes requested by the City.

(c) Construction and Restoration. All streets **rights-of-way**, public property, and lawfully installed improvements therein which are distributed **disturbed** by the permittee's activity shall be restored to the City's satisfaction in the time frame prescribed by the City, or if not prescribed by the City, as soon as possible (in no circumstances more than thirty days from the date of completion of construction) by the permittee, at its expense, to, at a minimum, the condition which existed prior to construction, to the City's satisfaction. In the event replacement and restoration of the area is not completed within thirty days or as soon as reasonably possible, the City may, upon written notice to the permittee, complete any necessary work at the sole expense of the permittee.

(d) Undergrounding. **When feasible or when** ~~Except where noted in the Exhibits attached to original Ordinance 322-97, passed January 18, 2000, and specifically authorized by the City prior to construction,~~ all of the permittee's facilities shall be installed underground and all installation of **street right-of-way** crossings shall be made by boring. The permittee shall make no open cuts without specific prior written permission of the City Engineer or his or her designee. Additionally, any facilities not installed underground must be expressly authorized beforehand by the City in writing, and so located that any interference with the other uses of the streets **rights-of-way** and other public properties, and any interference with the rights and reasonable convenience of property owners whose property adjoins any of the streets **rights-of-way** and other public properties, are minimal. No underground installation shall be made in any public right-of-way without having first obtained a ~~street cut~~ **right-of-way opening** or other permit from the City and complying with the City's bonding requirements.

(e) Alternative Burial Standards. In cases where the burial standards of Section 932.05(24) do not apply, the minimum burial depth for the permittee's underground facilities shall be two feet, or such other depth as approved by the City, with warning tape buried above all fiber optic cable, conduit or lines to reduce the potential for accidental breakage and to minimize actions under the hold harmless provision of Section 932.08(a).

932.07 REPORTS AND RECORDS.

(a) Open Records. The permittee shall manage all of its operations in accordance with a policy of keeping its records open and accessible to the City. The City shall have access to, and the right to inspect at all reasonable times, any books and records of the permittee and affiliated entities which are reasonably related to the administration or enforcement of the terms of this Permit **chapter**. The permittee shall not deny the City access to any of the permittee's records on the basis that the permittee's records are under the control of any parent company, affiliated entity or a third party. The City may also, in writing, request copies of any such records or books and the permittee shall provide such copies within thirty days of the transmittal of such request, at the sole expense of the permittee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then the permittee may request, in writing, within ten days, that the City inspect them at the permittee's local offices. If any books or

records of the permittee are not kept in a local metropolitan office and copies are not made available to the City upon written request as set forth above, and if the City determines that an examination of such records is necessary or appropriate to the performance of any of the City's duties, audits, administration or enforcement of this Permit chapter, then all reasonable travel and maintenance expense(s) incurred in making such examination shall be paid by the permittee. The requirements of this section shall be in addition to any other similar sections contained in other ordinances that affect the permittee.

~~(b) Confidentiality. The City agrees to treat as confidential any books or records that constitute proprietary or confidential information under Federal or State law, to the extent the permittee makes the City aware of such confidentiality. The permittee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation why such information should be treated as confidential under State or Federal law. If the City receives a demand from any person for disclosure of any information designated by the permittee as confidential, the City shall, so far as consistent with applicable law, advise the permittee and provide the permittee with a copy of any written request by the party demanding access to such information within a reasonable time. Nothing herein shall alter the City's obligation to comply with the Ohio Open Records Act as the same may, from time to time, be amended.~~

~~————(e) Public Filings.~~

(4) The permittee shall notify the Mayor of the City, and provide a copy, upon its request, of all FCC, Federal and State reports and filings on behalf of the permittee or its affiliates which relate to the operation of the system.

~~(2) All information furnished to the City that is not subject to confidential treatment under subsection (b) hereof is public information, and shall be treated as such.~~

~~(d)(c)~~ Annual Reports. Within 120 days after the close of the permittee's fiscal year, the permittee shall submit to the City a written annual report, in a form acceptable to the City, which shall include, but not necessarily be limited to, the following information for the permit area:

(1) An expense statement certified by an officer of the permittee;

(2) A summary of the previous year's activities in development of the system, including, but not limited to, services begun or discontinued during the reporting year, and the number of users of the permittee's services;

(3) A statement of planned construction, if any, for the next two years;

(4) A list of the permittee's officers, members of its Board of Directors, and other principals of the permittee; and

(5) A list of stockholders, or other equity investors holding five percent or more of the voting interest in the permittee and its parent, subsidiary and affiliated corporations and other entities, if any, unless the parent is a public corporation whose annual reports are publicly available, in which case a copy of the annual report shall be submitted.

~~(e)(d)~~ Plant Survey Facilities Report. At the City's request, including, but not limited to, requests based on customer complaints or the City's own experience with the facilities, the permittee shall submit to the City, within thirty days of the request, unless such time is extended by the City, a ~~plant survey~~ facilities report, which shall be a survey of the permittee's plant facilities within all or portions of the permit area as specified by the City, and a full report thereon. Said report shall include, but not be limited to, an appropriate engineering evaluation of the telecommunications system, including, but not limited to, any suitable electronic measurements conducted in conformity with such requirements, including supervision, as the City may prescribe. Said report shall be in sufficient detail to enable the City to ascertain that the same meet service requirements and all applicable Federal, State and local construction, operational and technical performance standards. At the City's request, but not more than once per year, the permittee and the City shall agree upon the appointment of a qualified independent engineer to evaluate and verify the performance of the system. Subject to the prior appropriation of funds therefor, the cost of the evaluation shall be borne equally by the permittee and the City, unless the independent engineer determines that the system fails to meet applicable standards, in which case the

permittee shall reimburse the City for all costs of the evaluation.

(f)(e) Failure to Report. The failure or neglect of the permittee to file any of the reports or filings required under this Permit, or such other reports as the City may reasonably request, may, at the City's option, be deemed a breach of this any Ppermit granted to permittee under this chapter.

(g) False Statements. Any intentional false or misleading statement or representation in any report required by this Permit chapter may be deemed a breach of this Permit chapter and may subject the permittee to all remedies, legal or equitable, which are available to the City under this Permit chapter or otherwise.

932.08 INDEMNIFICATION AND INSURANCE.

(a) Indemnification.

(1) The permittee shall construct, maintain and operate its facilities in a manner which provides protection against injury or damage to persons or property. The permittee, for itself and its related entities, agents, employees and subcontractors, and the agents and employees of said subcontractors, shall save the City harmless, defend and indemnify the City, its successors, assigns, officers, employees, agents and appointed and elected officials, from and against all liability or damage and all claims or demands whatsoever in nature, and reimburse the City for all its reasonable expenses, including attorney fees, as incurred, arising out of the installation and operation of the permittee's system within the ~~streets and~~ rights-of-way, including, but not limited to, the actions of the permittee, its employees, agents, contractors, related entities, successors and assigns, or the securing of and the exercise by the permittee of the permit rights granted ~~in this Permit hereunder~~, including any third party claims, administrative hearings, actions for copyright infringement and litigation, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Permit chapter. The terms of each contract awarded by the permittee for activities pursuant to this Permit chapter shall contain indemnity provisions whereby the contractor shall indemnify the City to the same extent as described above.

(2) The permittee shall pay, ~~and by its acceptance of this Permit agrees to pay~~, all actual expenses incurred by the City in defending itself with regard to all damages and penalties arising in any way out of the exercise of any rights granted hereunder. In the event the City institutes litigation against the permittee for a breach of this its Ppermit or for an interpretation of this Permit chapter, and the City is the prevailing party, the permittee shall reimburse the City for all costs related thereto, including reasonable attorney fees.

(b) Notice. Within thirty days after receipt of the same by the ~~Law Director~~ City, the City will provide notice to the permittee of the assertion of any claim or action arising out of the exercise by the permittee of its Ppermit rights. The permittee will be permitted, at its own expense, to appear and defend or assist in the defense of such claims. The permittee shall have no recourse whatsoever against the City for or on account of any loss, cost, expense or damage arising out of the provisions or requirements of this Permit chapter, or the grant of the permit.

(c) Certificate of Insurance.

(1) At the time of the execution of this its Ppermit, and annually thereafter, the permittee shall provide to the City, in accordance with the provisions hereof, a certificate of insurance. The permittee shall maintain public liability and property damage insurance that protects the permittee and the City, its officers, agents, employees and appointed and elected officials, from any and all claims for damages or personal injury, including death, and demands, actions and suits brought against any of them arising from operations under this its Ppermit or in connection therewith, in accordance with the subsections below. Coverage during construction shall include those hazards normally identified as X.C.U. This insurance coverage constitutes a minimum requirement and shall in no way be deemed to lessen or limit the liability of the permittee, related entities, its successors or assigns, under the terms of this chapter or its revocable Ppermit.

(2) The certificate of insurance shall be with a company licensed to do business in the State of Ohio with a rating by Best of not less than "A". This liability insurance shall include, but shall not

be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from the permittee's automobiles, products and operations. The insurance shall provide coverage at all times for not less than five hundred thousand dollars (\$500,000) for bodily injury to any one person and one million dollars (\$1,000,000) bodily injury in the aggregate per single accident or occurrence and five hundred thousand dollars (\$500,000) for damage to any single property, and one million dollars (\$1,000,000) for property damage in the aggregate per single accident or occurrence, plus costs of defense, or in such other amounts as are acceptable to the City and as provide substantially equivalent coverage. The following endorsements shall attach to the liability policy:

A. The policy shall cover personal injury as well as bodily injury.

B. The policy shall cover blanket contractual liability, subject to the standard universal exclusions of contractual liability included in the carrier's standard endorsement as to bodily injuries, personal injuries and property damage.

C. Broad form property damage liability shall be afforded.

D. The City and its elected officials, officers, agents and employees shall be named as additional insureds on the policy. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.

E. Standard form of cross-liability shall be afforded.

F. The policy shall not be canceled or materially altered so as to be out of compliance with the requirements of this section, without thirty days written notice of such cancellation or alteration given to the City.

(3) If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this section, the permittee shall provide a replacement policy. The permittee agrees to maintain continuous uninterrupted insurance coverage in the amounts required.

(4) The City reserves the right to adjust the coverage limit requirement upward in the event the statutory maximums applicable to local governments are raised and that such increased coverage limit requirements are equally applied to all other permittees of the City.

(5) Any deductible or self-insured retention must be declared to the City.

(6) The permittee shall submit to and maintain on file with the City documentation of the required insurance, including a certificate of insurance signed by the insurance agent and companies named, as well as all properly executed endorsements. Said certificate shall be subject to the approval of the City as to the adequacy of the certificate and of the insurance certified under the requirements of this section.

(7) Failure of the permittee to maintain adequate insurance as required under this section shall be cause for immediate termination of ~~the~~ its permit granted by the City.

(8) Nothing herein shall be in any way construed as a waiver on behalf of the City of any of the protections or provisions of the Ohio Governmental Immunity Act, and the permittee shall ensure that in naming the City as an insured under this section, all insurance policies or agreements shall specifically contain a non-waiver provision and shall not impair said protection and provisions.

(d) Security.

(1) With respect to the initial construction of the telecommunications system, or any significant project to upgrade or rebuild more than fifty percent of the telecommunications system, the permittee shall provide to the City a construction performance and construction completion bond (hereinafter referred to as the construction completion bond) with a surety reasonably approved by the City's ~~Law Director~~, in an amount equal to ten percent of the applicable estimated construction cost. Such amount shall not exceed two hundred thousand dollars (\$200,000). With respect to the initial construction of the telecommunications system or the upgrade or rebuild project, when regular subscriber service is available to seventy-five percent of occupied dwelling units, the amount of the bond shall be reduced by

fifty percent of the original amount. On the one-year anniversary of the initial construction of the telecommunications system or the upgrade or rebuild project, as the case may be, the bond may be canceled.

(2) The permittee shall also deposit with the City a surety bond or letter of credit in the amount of fifty thousand dollars (\$50,000) in a form reasonably acceptable to the ~~Law Director of the~~ City (hereinafter referred to as the performance bond). The performance bond shall be available to insure the faithful performance by the permittee of provisions of the **ROW** permit, other than with respect to construction, upgrading or rebuilding projects covered herein, but including the obligation to remove the telecommunications system upon revocation or termination of the permit as set forth herein. The performance bond shall be maintained at fifty thousand dollars (\$50,000) during the entire term of ~~this~~ **the ROW P**permit, regardless of withdrawals which may be made under this section. In the event of a default by the permittee in any of its obligations under ~~this~~ **its ROW P**permit, other than completion of construction, which default is not cured within thirty days after notice by the City to the permittee of such default (or such longer time as is necessary to cure, so long as the permittee commences to cure within thirty days and diligently pursues cure), the City may levy on the performance bond upon notifying the permittee of the amount of such charge. The rights reserved to the City with respect to the performance bond are in addition to all other rights of the City, at law or in equity.

932.09 REMOVAL OF FACILITIES; TRANSFER OF OWNERSHIP TO CITY.

Upon revocation of ~~this~~ **any P**permit **granted hereunder**, and no proposed assignee requests and receives the City's approval of a transfer of the permittee's telecommunications system, and an assignment of ~~this~~ **the ROW P**permit or grant of a new **ROW P**permit, within a reasonable period of time, but in no event more than ninety days after such termination, then the permittee shall remove said telecommunications facilities at the permittee's expense. As an alternative to removal, the permittee may, subject to the City's approval, abandon its facilities in place and transfer ownership of the installed telecommunications facilities to the City. Nothing herein shall cause the City to incur any costs related to the removal of the permittee's facilities or the transfer of ownership of said facilities to the City.

932.10 ASSIGNMENT OF PERMIT AND LEASE OF FACILITIES.

(a) City's Consent Required for Assignment. The permittee shall not assign ~~this~~ **its P**permit or any rights or obligations accorded the permittee ~~thereunder~~ to any party without the prior written consent of the City, which shall not be unreasonably withheld. Further, the permittee agrees not to assign any billing or collection functions under this ~~Permit~~ **chapter** to a subsidiary or parent without prior written notice to and written consent from the City, which shall not be unreasonably withheld. Should the permittee attempt to assign ~~this~~ **its ROW P**permit or its rights ~~thereunder~~ without the prior consent of the City, ~~this~~ **its ROW P**permit shall be subject to forfeiture or termination as provided herein, unless such assignment is ratified by the City for any and all costs incurred, including attorney fees, resulting from any such attempt to assign ~~this~~ **the ROW P**permit, in whole or part. A refusal by the City to approve an assignment of ~~this~~ **the ROW P**permit or the permittee's rights ~~thereunder~~ shall be deemed reasonable, among other things, and without limitation, if and insofar as it relates to any requirement or condition of the City that the proposed assignee cure any existing default of the permittee ~~thereunder~~ and/or to any demonstration of the assignee's qualifications equivalent to demonstrations of the permittee's qualifications required hereunder, including, but not limited to, the technical and financial strength and operating experience of the assignee.

(b) Lessee to Obtain Permit. The permittee shall not lease any of its telecommunications facilities, system capacity, system bandwidth or use of the ~~streets, and~~ rights-of-way in which such are contained, to any persons or other entities providing telecommunications services, without first ensuring that such persons have obtained a revocable permit and other required permits or franchises from the City for the provision of such services, and without the prior written consent of the City.

932.11 PERMIT REVOCATION.

(a) Permit Revocable. A permit hereby granted shall be revocable at any time that the ~~Council~~ **Director of Public Service** shall determine that the public convenience and necessity or the public health, safety or general welfare requires such revocation or where the permittee has breached any of the provisions of this **its ROW P**permit, and the right to revoke the same is hereby expressly reserved to the City. However, at a reasonable time prior to ~~Council~~ **such** action upon such revocation or proposed revocation, opportunity shall be afforded to the permittee, its successors and assigns, to be present at a hearing to be conducted by the **City** Council upon such matters and thereafter to present its or their views and opinions thereof and to present for consideration, actions or actions alternative to the revocation of this **the P**permit.

(b) Continued Obligations. The revocation of this **a P**permit **granted hereunder**, for any reason, shall not operate as a waiver or release of the permittee from any obligation or any liability which arose or arises out of any act or failure to act required under this **such P**permit prior to termination.

932.12 EQUAL OPPORTUNITY; SAFETY.

(a) Nondiscrimination. In all matters connected with this **Permit chapter**, the permittee shall not discriminate against any employee, subcontractor, customer, client, or applicant for employment because of race, color, religion, age, sex, national origin, or handicap. The permittee shall adhere to acceptable affirmative action guidelines in selecting employees, subcontractors, and customers, and shall ensure that the employees, subcontractors, and customers are treated in all respects without regard to their race, color, religion, age, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, promotion, demotion, transfer, recruitment and recruitment hiring, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The permittee agrees to comply with such applicable rules, regulations, or guidelines as the City, State or Federal agencies may issue to implement these requirements.

(b) Safe Work Place. It is a condition of this **all P**permits **granted hereunder** that the permittee shall not, in all matters connected with this **its P**permit, require any person employed or subcontracting in the performance of this **the P**permit to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety. The permittee shall comply with all applicable safety rules and regulations adopted by the United States Department of Labor, the Occupational Safety and Health Administration (OSHA), the Industrial Commission of the State of Ohio, or the City, whichever is more restrictive.

932.13 COMPLIANCE WITH STANDARDS.

The permittee's telecommunications **facilities and** system shall be constructed, operated and maintained in accordance with all applicable Federal, State and local standards and requirements. If the City, or a qualified independent engineer of the City's choosing **and whose services are paid for by the permittee**, determines at any time that the permittee's system is not in compliance with applicable standards or requirements and so notifies the permittee, then the permittee shall immediately take appropriate remedial action and continue such action without interruption until the system is in compliance.

932.14 EMERGENCY USE OF FACILITIES.

The permittee shall, in the case of any City, State, or national emergency or disaster, upon the request of the Mayor, Council or any designated representative thereof, make the facilities **and system** available to the City, without cost, for emergency use during the duration of the emergency or disaster period.

932.15 OTHER LEGAL REMEDIES.

Nothing herein contained shall limit or restrict any legal rights that the City may possess arising from any alleged violation of this ~~Permit~~ **chapter**, and the City reserves all rights available to it under current or future laws.

932.16 COMPLIANCE WITH CHAPTER REQUIRED.

The permittee shall not be excused from complying with any provisions of this ~~Permit~~ **chapter** by any failure of the City to insist upon or to seek compliance with such provisions.

932.17 PERMITTEE AS INDEPENDENT CONTRACTOR.

Except as otherwise provided by Section 932.10, this ~~Permit~~ **chapter** governs rights between the City and the permittee, and is not intended in any way to confer any rights, duties or obligations upon any third parties. The permittee shall conduct the work to be performed pursuant to ~~this~~ **its ROW P**permit as an independent contractor and not as an agent of the City.

932.18 CITY'S RIGHT TO PURCHASE OR CONDEMN PUBLIC WORKS OR WAYS.

The right of the City to construct, purchase, or condemn any public works or ways, and the rights of the permittee in connection therewith, as provided by the Ohio Constitution and statutes, are hereby expressly reserved.

932.19 CORPORATE QUALIFICATIONS TO BE MAINTAINED.

The permittee shall maintain and preserve its corporate existence, its business, and all of its rights and privileges necessary or desirable in the normal conduct of said business. The permittee shall maintain its good standing in its state of incorporation and continue to qualify to do business and remain in good standing in a foreign jurisdiction in which it conducts business. All of the properties, assets and equipment of the facilities and the system shall be maintained in good repair, working order and good condition. Process in any action, legal proceeding or procedure under this ~~Permit~~ **chapter** or in any way related to ~~this~~ **permittee's ROW P**permit may be served on the permittee either in person, or by registered mail addressed to the permittee at the address set forth herein or any update thereof.

932.20 AMENDMENTS TO PERMIT.

(a) At any time during the term of ~~this~~ **any P**permit granted hereunder, the City or the permittee may propose amendments to ~~this~~ **such P**permit by giving thirty days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree on mutually satisfactory amendment(s). Nothing contained in this section shall be construed as limiting the parties' ability to agree to amend ~~this~~ **such P**permit, as provided for herein. ~~This A P~~ **Permit** may only be amended in writing, ~~by ordinance enactment by the Council for the City.~~

(b) Any telecommunications right-of-way permit granted under this chapter may be amended only in accordance with the provisions contained in ~~the permit and this chapter and only upon approval of such amendment by Council.~~

932.21 GOVERNING LAW.

~~This Permit~~ **chapter** shall ~~be deemed to be executed in the City of Parma, State of Ohio, and shall be governed in all respects, including validity, interpretation and effect, and construed, in accordance with the laws of the State of Ohio, as applicable to contracts entered into and to be performed entirely within Ohio. For the purposes of the rights granted herein, the~~ **any permit granted hereunder** shall be deemed to be a license.

932.22 REPRESENTATIVES.

~~The City and the permittee shall designate, in writing, a representatives who shall cooperate to assure that any difficulties arising under the terms of this Permit shall be expeditiously resolved. Each party shall have a representative to whom notices shall be sent regarding this any Permit granted hereunder. Initially, the City's representative shall be:~~

~~—— Mayor of the City of Parma~~

~~—— 6611 Ridge Road~~

~~—— Parma, Ohio 44129~~

~~The permittee's representative to whom notices shall be sent shall be:~~

~~Notices, including notice of any change of representative, shall be in writing and forwarded by certified mail, hand delivery or overnight delivery service to the designated representative. If the permittee's representative or the address of such representative for either party changes, that party permittee shall notify the other City promptly of said change in writing, providing the name of the new contact and/or the new address.~~

932.99 PENALTY.

~~Any person, firm, partnership, corporation, limited liability company, trust, joint stock company, unincorporated association, governmental entity, banking institution or any other person or organization who or which violates any provision of this chapter or any provision of a telecommunications right-of-way permit granted under this chapter is guilty of a misdemeanor of the first degree and shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than six months, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.~~